

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK SHAUN LOVEDAY,

Petitioner,

No. CIV S-05-0105 GEB DAD P

vs.

M. YARBOROUGH, Warden,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 29, 2007, the court ordered petitioner to file an amended petition which included only his exhausted claims. This order was issued after petitioner failed to file an amended motion for a stay and abeyance, despite the granting of several extensions of time in which to do so. Before the court now is petitioner's document styled, "Motion For Leave To Withdraw Petition For Habeas Corpus."

The entire motion consists of the following two sentences:

Please Take Notice: Petitioner Patrick Shaun Loveday, respectfully comes now before this Honorable Court requesting Leave to withdraw Habeas Petition Case No. CIV S-05-0105 GEB DAD P.

This action taken for the purpose of Exhausting all claims in the State Courts, as necessary to preserve meritorious grounds.

1 (Mot. at 1.) Subsequently on June 11, 2007, petitioner filed an “application” for the appointment
2 of counsel and an in forma pauperis application. It appears that petitioner intends to continue
3 with the pending action. Therefore the court will deny petitioner’s motion to withdraw his
4 petition and provide petitioner a final opportunity to file his amended petition.¹

5 Petitioner’s application for the appointment of counsel will be denied for the
6 reasons set forth in the court’s order filed on September 22, 2006. Petitioner’s in forma pauperis
7 application will be placed in the file and disregarded. Petitioner is already proceeding in forma
8 pauperis pursuant to the court’s order filed on October 11, 2005; therefore, his pending
9 application is unnecessary.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Petitioner’s April 19, 2007 motion to withdraw his habeas petition is denied;

12 2. Petitioner’s June 11, 2007 application for the appointment of counsel is
13 denied;

14 3. Petitioner’s June 11, 2007 application requesting leave to proceed in forma
15 pauperis shall be placed in the file and disregarded;

16 4. Within thirty days from the service of this order, petitioner shall file his
17 amended habeas petition that complies with the requirements of the Federal Rules of Civil
18 Procedure; the amended petition must bear the docket number assigned this case and must be
19 labeled “Amended Petition,” petitioner must use the form petition provided by the court and
20 answer each question on the form without reference to an attachment; petitioner must file an
21 original and one copy of the amended petition; petitioner’s failure to file an amended petition in
22 accordance with this order will result in the dismissal of this action; and

23
24 ¹ Petitioner is cautioned that should this action be dismissed, a subsequent federal habeas
25 action challenging the same underlying state court conviction may be barred by the statute of
26 limitations. This is because the statute of limitations is not tolled for the period of time petitioner
was proceeding with his pending federal habeas petition. See Duncan v. Walker, 533 U.S. 167
(2001).

1 5. The Clerk of the Court is directed to provide petitioner with the court's form
2 petition for a writ of habeas corpus by a state prisoner.

3 DATED: June 15, 2007.

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6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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